

Date of Hearing: June 27, 2023

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Jesse Gabriel, Chair

SB 271 (Dodd) – As Amended June 19, 2023

PROPOSED CONSENT

SENATE VOTE: 38-0

SUBJECT: Powered wheelchairs: repair

SYNOPSIS

This bill would make California the second state, after Colorado, to enact a “right to repair” powered wheelchairs designed for use by people with physical disabilities. Under this bill, powered wheelchair owners and independent repair providers would be able to obtain, on fair and reasonable terms, the documentation, parts, software, and tools from manufacturers necessary to repair those wheelchairs. The bill would apply to wheelchairs sold or in use on or after January 1, 2024.

Wheelchair manufacturers have limited capacity to make repairs in-house, and there are few certified complex rehabilitation technology (CRT) providers in the state. Over the past five years, the number of CRT providers in California has declined by 50%, further exacerbating repair wait times for powered wheelchair users. As a result, during the often-lengthy waiting periods for repairs, wheelchair users may find themselves confined to their beds, which, beyond significantly diminishing the quality of their daily lives, heightens their susceptibility to medical complications that may lead to hospitalization.

The bill promises a number of benefits, including faster repairs at lower cost, leading to better health outcomes; reduced waste; increased competition in the wheelchair repair market; incentivizing of manufacturers to design powered wheelchairs that are more easily repairable; and increased safety and reliability of repaired devices, as repairs should no longer require counterfeit or “grey market” replacement parts. Ultimately, this bill could significantly improve the quality of life for thousands of people with mobility disabilities, providing them independence and saving them precious weeks or months when they might otherwise be bedridden.

This measure is co-sponsored by California Foundation for Independent Living Centers and Consumer Reports, and supported by a diverse array of groups and entities, including the Association of Regional Center Agencies, California Senior Legislature, National Federation of Independent Business, and the South Bayside Waste Management Authority. Recent amendments have removed all recorded opposition to the bill.

If passed by this Committee, the bill will next be heard by the Assembly Judiciary Committee.

SUMMARY: Requires a manufacturer of powered wheelchairs designed for use by people with physical disabilities to make available to independent repair providers and wheelchair owners, on fair and reasonable terms, the documentation, parts, and tools needed to repair those wheelchairs. Specifically, **this bill:**

- 1) Defines “powered wheelchair” as a motorized wheeled device designed for use by a person with a physical disability.
- 2) Defines “equipment” as a powered wheelchair.
- 3) Applies only to equipment sold or in use on or after January 1, 2024.
- 4) Defines “original equipment manufacturer” (OEM) as a business engaged in the business of selling, leasing, or otherwise supplying new equipment or parts manufactured by, or on behalf of, itself, to any individual or business.
- 5) Requires an OEM to, with fair and reasonable terms and costs, make available to an independent repair provider or owner of the manufacturer’s equipment, any documentation, parts, embedded software, firmware, or tools that are intended for use with the equipment or part, including updates to these items.
- 6) Requires an OEM to, with fair and reasonable terms and costs, with respect to equipment that contains an electronic security lock or other security-related function, make available to independent repair providers and owners any documentation, parts, embedded software, firmware, or tools needed to reset the lock or function when disabled in the course of providing services.
- 7) Exempts from the requirements in 5) and 6) any part for powered wheelchairs that would require programmability, calibration, or clinical involvement to ensure appropriate patient seating and positioning—provided the powered wheelchair is subject to Welfare and Institutions Code § 14132.8, which addresses Medi-Cal rehabilitative services for stroke patients who are physically or cognitively impaired, and certain patients who have brain injuries.

The parts in question include: a) batteries; b) battery chargers; c) nonprogrammable joysticks; d) joystick housings or brackets; e) wheel assembly; f) nonpositioning accessories; g) antip devices; h) armrests, excluding positioning components designed for adjustment by a therapist or assistive technology professional; i) caster spheres; j) cosmetic shrouding; k) floor mats; l) floor plates; and m) nonpowered leg lowerers.

- 8) Defines “independent repair provider” as an individual or business, other than the manufacturer, that is engaged in the services of inspection, diagnosis, maintenance, or repair of equipment for purposes of returning it to the safety and performance specifications established by the manufacturer and to meet its original intended use.
- 9) Defines “authorized repair provider” as an individual or business that is unaffiliated with an OEM and that has an arrangement with the OEM, for a definite or indefinite period, under which the OEM grants to the individual or business a license to use a trade name, service mark, or other proprietary identifier for the purposes of offering the services of inspection, diagnosis, maintenance, or repair of powered wheelchairs. The definition applies whether the services are offered under a) the name of the OEM or b) another arrangement with the OEM to offer such services on behalf of the OEM.
- 10) Clarifies that a product manufacturer is itself considered an “authorized repair provider” with respect to its own electronic or appliance products if it offers diagnostic, maintenance, or

repair services for these products—but only if the manufacturer does not have an arrangement, as described in 9), with an unaffiliated individual or business.

- 11) Requires an independent repair provider that is not an authorized repair provider, before providing repairs, to provide a written notice to the customer containing the following information:
 - a) The independent repair provider is not an authorized repair provider for the product.
 - b) The consumer may wish to review the terms and conditions of any warranty for the equipment, as repairs not performed by a designated authorized repair provider could potentially affect the warranty.
 - c) Warranties for consumer products are governed by the federal Magnuson-Moss Warranty Act, which gives consumers rights and protections that apply over any conflicting provisions in the warranty. Under Magnuson-Moss:
 - i) A warranty cannot generally require that maintenance repairs be performed only by an authorized repair provider, unless the Federal Trade Commission waives this prohibition, or the repair is provided free of charge, pursuant to that warranty.
 - ii) If damage to equipment is shown to be caused by faulty nonbrand equipment or by faulty repair by a nonauthorized repair provider, that damage may not be covered by the warranty, but the warranty may otherwise remain in effect.
 - d) Under Welfare and Institutions Code § 14109.4, an independent repair provider that is a Medi-Cal enrolled provider is prohibited from seeking reimbursement or attempting to obtain payment for the cost of covered services from a Medi-Cal applicant or recipient, unless the beneficiary owes a share of the cost.
- 12) Defines “fair and reasonable terms and costs” to mean the following:
 - a) For obtaining documentation, parts, embedded software, firmware, or tools from a manufacturer to provide services: on terms that are equivalent to the most favorable terms that the manufacturer offers to an authorized repair provider and costs that are no greater than the manufacturer’s suggested retail price.
 - b) For documentation, including any relevant updates: at no charge, except that, when the documentation is requested in physical printed form, a charge may be included for the reasonable actual costs of preparing and sending the copy.
 - c) For software tools:
 - i) At no charge and without requiring authorization or internet access.
 - ii) Without imposing impediments to access or use in effecting the diagnosis, maintenance, or repair, or to the efficient and cost-effective performance of these acts.
 - iii) Enabling full functionality.

- d) If a manufacturer does not use an authorized service dealer for a given repair, at a price that reflects the actual cost to the manufacturer to prepare and deliver the part, tool, or documentation, exclusive of any research and development costs incurred.
- 13) Defines “part” as any replacement part, either new or used, made available by an OEM for purposes of effecting the services of inspection, diagnosis, maintenance, or repair of powered wheelchairs manufactured by, or on behalf of, sold, or otherwise supplied by the OEM.
- 14) Defines “tools” as any software program, hardware implement, or other apparatus used in inspection, diagnosis, maintenance, or repair of powered wheelchairs, including software or other mechanisms that provision, program, or pair a new part, calibrate functionality, or perform any other function required to bring the product back to fully functional condition.
- 15) Clarifies the following:
- a) An OEM is not required to divulge a trade secret, except as necessary to provide documentation, parts, tools, service access methods, and training courses and materials on fair and reasonable terms.
 - b) An OEM may redact documentation to remove trade secrets before providing access, if the usability of the redacted documentation for the purpose of providing services is not diminished.
 - c) An OEM may withhold information regarding a component of, design of, functionality of, or process of developing a part, embedded software, firmware, or a tool if the information is a trade secret and the usability of the part, embedded software, firmware, or tool for the purpose of providing services is not diminished.
 - d) An OEM is not required to make available a part if the part is no longer available to the original equipment manufacturer.
 - e) An OEM is not liable for faulty or otherwise improper repairs provided by independent repair providers or owners, including faulty or otherwise improper repairs that cause any of the following:
 - i) Damage to a powered wheelchair that occurs during the repairs.
 - ii) Any indirect, incidental, or consequential damages.
 - iii) An inability to use, or a reduced functionality of, a powered wheelchair resulting from faulty or otherwise improper repair.
 - f) The bill is not to be construed to alter the terms of any arrangement between an authorized repair provider and an OEM, including, but not limited to, performance or provision of warranty or recall repair work. However, any provision of such an arrangement that purports to waive, avoid, restrict, or limit the OEM’s obligations to comply with this bill are void and unenforceable.
 - g) The bill is not to be construed to exempt an OEM from a products liability claim that is otherwise authorized by law.

- 16) Permits the Attorney General or a district attorney to bring a civil action in the name of the state for violation of this bill.
- 17) Provides for the following civil penalties:
 - a) An OEM that knowingly violates, or reasonably should have known that they violated, any provision of this bill, may be liable for a civil penalty of up to two thousand five hundred dollars (\$2,500) per powered wheelchair, not to exceed two hundred fifty thousand dollars (\$250,000), for a first violation.
 - b) An OEM that commits a first violation of this bill, but does not do so knowingly, may be provided a three-day right to cure the violation before a civil penalty is imposed.
 - c) An OEM that commits a second or subsequent violation of this bill shall be liable for a civil penalty of up to ten thousand dollars (\$10,000) per powered wheelchair, not to exceed two hundred fifty thousand dollars (\$250,000) for each series of related violations.
 - d) An OEM that violates a court order or injunction issued pursuant to this bill is liable for a civil penalty not to exceed ten thousand dollars (\$10,000) per violation.
- 18) Exempts an OEM that fails to provide a part because it is out of stock and the OEM is unable to obtain the part from the penalties under 17) if the OEM does both of the following:
 - a) The OEM informs the customer or independent repair provider that the part is out of stock, and, consequently, the OEM is unable to obtain the part.
 - b) The OEM makes the part available to the consumer or independent repair provider within three business days of when that part becomes available.
- 19) Provides the following regarding any action that results in civil penalties:
 - a) If the action was brought by the Attorney General, then one-half of the penalty collected is to be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. Upon appropriation by the Legislature, the latter funds may be used by the Attorney General to enforce this chapter.
 - b) If the action was brought by a district attorney, then the entire amount of the penalty collected is to be paid to the treasurer of the county in which the judgment was entered.
- 20) Permits a person injured by a violation of this bill to bring a civil action for damages or other appropriate relief.
- 21) Provides that the Department of Health Care Services shall not require prior authorization under Medi-Cal for the repair of a complex rehabilitation technology powered wheelchair.
- 22) Provides that a treatment authorization request for repair or replacement of a complex rehabilitation technology powered wheelchair does not require a prescription or documentation of medical necessity from the treating practitioner requesting the repair or replacement, if the complex rehabilitation technology powered wheelchair has already been approved for use by the patient.

EXISTING LAW:

- 1) Defines “trade secret” under the Uniform Trade Secrets Act as information, including a formula, pattern, compilation, program, device, method, technique, or process, that both:
 - a) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and
 - b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. (Civ. Code § 3426.1(d).)
- 2) Permits the Department of Health Care Services to require prior authorization and/or an evaluation by a qualified health professional for complex rehabilitation technology under Medi-Cal. (Welf. & Inst. Code § 14132.85.)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS:

1) **Background.** This bill is meant to address a longstanding problem for people whose mobility is impaired due to physical disability: how to obtain timely repairs for their powered wheelchairs. Manufacturers of powered wheelchairs are not currently required to provide owners or independent repair shops with the parts, documentation, and tools needed for repairs. But wheelchair manufacturers have limited capacity to make repairs in-house, and there are few certified complex rehabilitation technology (CRT) providers in the state. According to information provided by the author, over the past five years, the number of CRT providers in California has declined by 50%, further exacerbating repair wait times for powered wheelchair users. As a result, during the often-lengthy waiting periods for repairs, wheelchair users may find themselves confined to their beds, which, beyond significantly diminishing the quality of their daily lives, heightens their susceptibility to medical complications that may lead to hospitalization.

Unless addressed, this problem will only grow in coming years. As noted by the author:

According to the California Department of Aging, by 2030, one quarter of the state’s population will be older adults, so there is an increasing need to prepare to meet the needs of this growing demographic in the coming years. Further, repairing devices instead of replacing them can result in significant cost savings for this vulnerable population, who may have limited financial resources. Access to affordable repair services and parts can help alleviate the financial burden of replacing devices frequently.

This bill seeks to address the lack of wheelchair repair services by creating a “right to repair” powered wheelchairs. If enacted, it would establish a comprehensive statutory framework for wheelchair users and independent repair providers to access the necessary parts, tools, and documentation for the repair of powered wheelchairs.

The bill is also part of a broader national “right to repair” movement, at both the state and federal level, that seeks to give product owners increased access to timely, affordable repairs for a

number of products, including consumer electronics, household appliances, and agricultural equipment. Relevant recent developments include the following:

- In May 2021, the Federal Trade Commission (FTC) released a comprehensive report, in response to Congressional direction, identifying repair restrictions, assessing justifications for these restrictions, and exploring means of expanding consumers' repair options. FTC, *Nixing the Fix: An FTC Report to Congress on Repair Restrictions* (May 2021), available at https://www.ftc.gov/system/files/documents/reports/nixing-the-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf [hereinafter, "FTC Report"].)
- In July 2021, President Biden signed an "Executive Order on Promoting Competition in the American Economy." Among the initiatives therein is an order directing the FTC to "address persistent and recurrent practices that inhibit competition...such as unfair anticompetitive restrictions on third-party repair or self-repair of items[.]" The order can be found at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>. An accompanying White House fact sheet explains that the initiative will "[m]ake it easier and cheaper to repair items you own by limiting manufacturers from barring self-repairs or third-party repairs of their products." The fact sheet can be found at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/>.
- In June 2022, Colorado enacted HB22-103, legislation that requires, "[s]tarting January 1, 2023...a manufacturer to provide parts, embedded software, firmware, tools, or documentation, such as diagnostic, maintenance, or repair manuals, diagrams, or similar information, to independent repair providers and owners of the manufacturer's powered wheelchairs to allow an independent repair provider or owner to conduct diagnostic, maintenance, or repair services on the owner's powered wheelchair." (Colorado General Assembly, *Consumer Right to Repair Powered Wheelchairs*, available at <https://leg.colorado.gov/bills/hb22-1031>.)

According to the FTC Report, "right to repair bills have been introduced in at least 20 state legislatures in the last few years." (FTC Report, *supra*, p. 47.) Many aspects of the Colorado legislation mentioned above are mirrored in this bill.

2) **Author's statement.** According to the author:

SB 271, Consumer Wheelchair Right to Repair... would increase accessibility and affordability for wheelchair users, making it easier for consumers to maintain their devices and keep them in good working condition. Moreover, it will remove barriers to timely access to this technology by addressing a range of critical issues such as the removal of prior authorization and recurring prescriptions for Complex Rehabilitation Technology (CRT) users. [...] This bill would positively influence the lives of people who use wheelchairs in California by giving them greater control over the repair and maintenance of their devices. Additionally, it reflects a commitment to treating all members of society with dignity and respect, particularly those with disabilities who rely on powered wheelchairs.

3) **How this bill would work.** As can be seen by reviewing the **SUMMARY** above, this bill rests on a number of highly-technical and nuanced definitions of terms such as “fair and reasonable terms and costs,” “parts,” and “tools.” But at its core, the bill would work as follows:

1. It would apply to powered wheelchairs, as defined: motorized wheeled devices designed for use by people with physical disabilities. To be covered by this bill, a wheelchair must have been sold or in use on or after January 1, 2024.
2. The original manufacturer would have to make available to independent repair providers and to owners, any documentation, parts, embedded software, firmware, or tools intended for use with the powered wheelchair.
3. The manufacturer would have to make the documentation, parts, embedded software, firmware, and tools available on “fair and reasonable terms”: essentially, on the most favorable terms under which the manufacturer makes these things available to one of its authorized repair providers; and at costs no greater than the manufacturer’s suggested retail price. (If the manufacturer does not use authorized service providers, then at the actual cost to the manufacturer for these things.)
4. If an independent repair provider is not a manufacturer’s authorized repair provider, then the independent provider would have to provide customers with a written notice a) informing them of this fact, b) warning to consult the wheelchair’s warranty, and that damage caused by a faulty repair or faulty equipment may not be covered under the warranty, and c) providing information regarding Medi-Cal reimbursement requirements.
5. The bill may be enforced by the Attorney General or by a district attorney, with civil penalties assessed for violations. Manufacturers that commit a first-time, unknowing violation of the bill would be granted three-day right to cure the violation before civil penalties are imposed.
6. An independent repair provider would not have to obtain prior authorization through Medi-Cal before repairing a powered wheelchair if the wheelchair was previously approved for use by the patient seeking repairs.

4) **Potential benefits of this bill.** This appears to be a well-thought-through bill that addresses a problem of the utmost importance for mobility-impaired individuals, a highly vulnerable population. If it works as intended, it ought to provide the following benefits:

- Faster repairs at lower cost, leading to better health outcomes for powered wheelchair users.
- Reduced waste, by facilitating repair rather than replacement.
- Allowing small businesses to provide independent repair services, thereby creating competition in the wheelchair repair market, leading to both lower costs and faster repair times.
- Incentivizing of manufacturers to design powered wheelchairs that are more easily repairable, in order to more easily meet this bill’s requirements.

- Increased safety and reliability of repaired devices, as repairs will no longer require counterfeit or “grey market” replacement parts.

Ultimately, this bill could significantly improve the quality of life for thousands of people with mobility disabilities, providing them independence and saving them precious weeks or months when they might otherwise be bedridden.

5) **Related legislation.** SB 244 (Eggman, 2023) would require a manufacturer of electronic or appliance products, as defined, to make available, on fair and reasonable terms, sufficient documentation and functional parts and tools, on fair and reasonable terms, to effect the diagnosis, maintenance, or repair of the product. Status: Assembly Privacy and Consumer Protection Committee.

SB 605 (Eggman, 2021) would have required manufacturers of powered medical devices to make the documentation, software, and parts necessary to maintain and repair such devices available to hospitals and to independent service organizations engaged by a hospital, on fair and reasonable terms, so that a hospital or its engaged repair service could conduct its own maintenance and repairs. The bill died in the Senate Appropriations Committee

ARGUMENTS IN SUPPORT: National Health Law Program explains why this bill is so badly needed:

Powered wheelchairs are crucial to the well-being and independence of many Californians with a wide variety of medical conditions and mobility impairments. However, the shortage of licensed repair shops in the State and long wait times for repairs can cause serious difficulties for individuals who need powered wheelchairs for daily activities. Without access to a safe, functioning, and reliable chair, people are unable to work, pursue education, take care of their families, or otherwise participate in community life. Some individuals can be confined to their homes, while others cannot get out of bed without a properly functioning mobility device. This can lead to life-threatening pressure sores, muscle degeneration, and other complications that can necessitate costly medical interventions and hospitalizations, and decrease an individual’s quality of life.

Manufacturers are not currently required to provide information or replacement parts directly to consumers or independent repair businesses for power wheelchairs. This is unjust. It forces people with disabilities to forgo or wait months for needed repairs, obtain improper repairs that can put their health and safety at risk, or absorb the high cost of a new chair (an expense that most disabled people simply cannot afford, given the \$25,000+ price tag on a new chair, health insurance plans’ widespread lack of adequate coverage of these devices, and the fact that people with disabilities are disproportionately low-income).

REGISTERED SUPPORT / OPPOSITION:

Support

California Foundation for Independent Living Centers (co-sponsor)
Consumer Reports Advocacy (co-sponsor)
Association of Regional Center Agencies
California Commission on Aging
California Senior Legislature

California State Council on Developmental Disabilities (SCDD)
Californians Against Waste
California Public Interest Research Group (CalPIRG)
Communities Actively Living Independent and Free
Democrats of Rossmoor
iFixit
LeadingAge California
National Federation of Independent Business
National Health Law Program
South Bayside Waste Management Authority dba RethinkWaste
Yolo County In-home Supportive Services Advisory Committee
Yolo Healthy Aging Alliance

Opposition

None on file

Analysis Prepared by: Jith Meganathan / P. & C.P. / (916) 319-2200